

DOCKET NO. 2021-____-WS

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)	
Petition for Approval of Water and)	BLUE GRANITE WATER
Sewer Agreement of Blue Granite)	COMPANY'S PETITION FOR
Water Company Related to Cross)	APPROVAL OF
Development)	WATER AND SEWER
)	AGREEMENT
)	

In support of its request, the Company would show the following:

- Samuel J. Wellborn
Frank R. Ellerbe, III
ROBINSON GRAY STEPP & LAFFITTE, LLC
1310 Gadsden Street
Columbia, South Carolina 29201
Telephone: 803.929.1400
fellerbe@robinsongray.com
swellborn@robinsongray.com

3. The Company operates potable water production, treatment, storage, transmission, and distribution systems and sanitary wastewater collection, treatment, and effluent disposal systems, which are located in and serve various parts of the State of South Carolina, including York County.

4. Cross Development CC Lake Wylie, LLC is the Developer of certain real estate located in Clover, South Carolina in York County (the "Property").

5. The Company and Cross Development CC Lake Wylie, LLC have negotiated the Agreement under which the Company will provide water and sewer service to the Property. In turn, Cross Development CC Lake Wylie, LLC will construct and install the water distribution and wastewater collection facilities to serve the Property according to the terms and conditions of the Agreement. A copy of the Agreement is attached hereto as Attachment A.

6. The Company has sufficient water and sewer service available to serve the properties subject to the Agreement being filed for approval in this case. Blue Granite has a total of 4.0 million gallons per day ("MGD") of water capacity to serve the Lake Wylie service area, of which it currently uses 2.0864 MGD. The addition of this connection is expected to increase the utilized water capacity by 0.001 MGD to 2.0886 MGD, well below the 4.0 MGD limit. There is no limit to the Company's available sewer capacity, though the Company expects the property to increase daily outflows by 0.00076 MGD.

7. The Company requests Commission approval of the Agreement, and submits that the public convenience and necessity will be served by such approval. Applicant further submits that approval of the Agreement without the need for notice or hearing is appropriate in this case. Inasmuch as the Agreement is not a "new rate, toll, rental, charge, or classification or a new regulation" under S.C. Code Ann. § 58-5-240 or "a new or changed schedule" under S.C. Code

Ann. § 58-5-260, notice and hearing are not required. Because notice and hearing, where not required by law, are discretionary on part of the Commission,¹ given the nature of the Agreement, and because the requisite cost and burden of notice and a hearing would outweigh any benefit to the Company's ratepayers, approval of the Agreement without the need for notice or hearing is appropriate in this case.

8. The certification of Travis Dupree, who is Vice President of Project Management and Engineering for Blue Granite, is attached hereto as Attachment B, and certifies that the contents contained herein are true, accurate and correct to the best of his knowledge, information and belief.

WHEREFORE, the Company requests that the Agreement be approved without notice or hearing, and that Applicant be granted such other and further relief as the Commission deems just and proper.

s/Samuel J. Wellborn
 Frank R. Ellerbe, III (SC Bar No. 01866)
 Samuel J. Wellborn (SC Bar No. 101979)
 Robinson Gray Stepp & Laffitte, LLC
 P.O. Box 11449
 Columbia, SC 29211
 (803) 929-1400
fellerbe@robinsongray.com
swellborn@robinsongray.com

Attorneys for Blue Granite Water Company

May 25, 2021

¹ See S.C. Code Ann. Regs. 103-817(C)(3)(a) (“[T]he Chief Clerk *may* . . . provide the party filing the pleading a Notice of Filing, and, *where required by law*, the party at its own expense shall publish such notice one time in newspapers having general circulation in the party’s service area.”) (emphasis added); S.C. Code Ann. Regs. 103-817(C)(2) (“Where provided by law, any proceeding initiated under these rules may be disposed of without hearing by Order of the Commission within 14 days after the pleading has been accepted for filing, upon the written opinion of the Commission that the pleading on its face shows that a hearing is not necessary, in the public interest, or for the protection of substantial rights.”).

AGREEMENT FOR WATER AND SEWER SERVICE
CALIBER COLLISION
YORK COUNTY, SC

This Agreement is entered into this 15th day of March 2021 by and between Cross Development CC Lake Wylie, LLC, existing under the laws of the State of Texas and authorized to do business in South Carolina (hereinafter referred to as "Developer"), and Blue Granite Water Company, a Delaware corporation authorized to do business in South Carolina (hereinafter referred to as "Utility").

WITNESSETH

WHEREAS, Developer is the owner of a certain real estate parcel containing approximately 2.384 acres (a portion of Tax Parcel No 5750000007), located at 4318 Charlotte Hwy, Clover, South Carolina 29710, hereinafter referred to as the "Property" (see "Exhibit 1"); and,

WHEREAS, Developer desires to develop the Property into a residential and commercial multi-use development currently projected to ultimately consist of a commercial autobody repair facility to be called "Caliber Collision," having an estimated daily water usage of 1000gpd and wastewater usage of 760 gpd when completed; and,

WHEREAS, Utility is a public utility engaged in the business of furnishing water and sewer service to the public in its designated River Hills / Lake Wylie Franchised Service Territory located in York County and the Property is located within the service territory. The Utility desires to have constructed and installed, and the Developer desires to construct and install at no cost to Utility, the water distribution and wastewater collection facilities to serve the Property subject to the terms and conditions of this Agreement; and,

WHEREAS, Developer desires Utility to provide water and wastewater utility service within the Property and Utility desires to provide water and wastewater utility service according to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

Representations and Warranties of Developer

Developer represents and warrants that:

1. Developer is the owner of or is duly authorized to act on behalf of the owner(s) of the Property; and,
2. Developer shall be responsible for obtaining and will obtain all necessary governmental approvals, permits and authorizations in connection with the construction and installation of the Facilities contemplated by this Agreement; and,
3. Developer shall cooperate with Utility in any and all applications or petitions to governmental or public authorities that Utility deems necessary, in its sole discretion, in relation to Utility's provision of water and wastewater utility service and its acceptance of dedication of all necessary facilities constructed and installed by Developer; and,
4. Developer shall convey to Utility, or otherwise vest in Utility (at no cost to Utility), such right, title and interest in and to such real estate as may be reasonably necessary to permit Utility to carry out the terms and conditions of this Agreement; and,
5. Developer shall convey to Utility or provide by recorded subdivision plats (at no cost to Utility) such easements or rights of way as Utility may reasonably require for the Utility's performance of its obligations under this Agreement. Any such plats, conveyances or licenses will be in form reasonably satisfactory to Utility's legal counsel and applicable regulatory bodies.

ARTICLE II

Obligations and Construction of Facilities by Developer

I. Facilities

Developer shall construct and install any additional necessary water distribution and wastewater collection facilities to serve the Property at no cost to Utility, including but not limited to mains, valves, fire hydrants, service laterals, meter boxes, meters, manholes, backflow devices, and other facilities as are reasonably required to provide adequate water, including fire protection flows, and wastewater service. Developer shall provide any necessary easements as specified by the utility to provide water and sewer service. Developer shall install Neptune AMI/AMR water meters as specified by Utility. Water distribution mains shall be sized, with the approval of the Utility in order to provide adequate peak domestic and fire protection flow to development and the surrounding areas. Developer shall connect to existing water mains at points to be approved by Utility and extend the waterline across the front of the property for the width of the property, while matching the existing waterline size and material being connected to. Developer shall connect to the existing sewer system at a point to be approved by Utility. All materials used by Developer for said Facilities shall be installed per the Utility's specifications, new, first-class, and suitable for the uses intended therefor. Developer shall obtain industry standard warranties from all contractors working on construction or installation of the Facilities and assign or otherwise transfer such warranties in writing to Utility. In addition, Developer warrants that all construction, materials, and workmanship of the Facilities shall be free of defects for one year after the Facilities (or such portion of the Facilities) are placed into service and dedicated and accepted in writing by Utility, and that the Facilities (or any portion thereof) shall operate as intended, without trouble, for a period of one year after the Facilities are placed into service and dedicated and accepted in writing by Utility.

2. All Facilities constructed and installed by Developer pursuant to this Article II shall be constructed and installed without cost or expense to Utility. Developer shall be responsible for all local, state and federal taxes and permitting fees arising as a result of (i) dedication of the Facilities to Utility, (ii) acceptance of the Facilities by Utility, and (iii) the new use of the Facilities by Utility to provide water and wastewater services under this Agreement.
3. All plans, specifications and construction of the Facilities shall be in accordance with applicable standards, requirements, rules and regulations of all governmental bodies and regulatory agencies that may have jurisdiction thereover and must receive the written approval of Utility before construction is begun, which approval shall not be unreasonably withheld or delayed.
4. Developer shall defend, indemnify and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur in the course of the performance of the construction or commissioning of the Facilities by Developer or by anyone acting on Developer's behalf, or under Developer's supervision and control, including but not limited to claims made by employees, agents or assigns of Developer, and Developer shall, at its own cost and expense, pay all costs and other expenses arising therefrom, or incurred in connection therewith, including reasonable attorneys' fees. Further, for a period of five (5) years after Utility's acceptance of the Facilities Developer shall defend, indemnify and hold Utility harmless from and against all suits or claims, including reasonable attorneys' fees incurred by Utility to defend such suits or claims, based upon the negligent design, construction, commissioning or dedication of the Facilities by Developer.
5. Developer shall maintain general liability insurance for at least \$5 million that covers liability arising from the construction, dedication and any failure of the Facilities, and shall add Utility as a named insured on that policy.

6. Developer shall obtain, with cooperation from Utility, all requisite permits and zoning and other approvals and all else required to construct the Facilities, without cost or expense to Utility.
7. Upon written acceptance of the Facilities by Utility and interconnection with Utility's existing water and sewer system, all of the Facilities installed by Developer pursuant to this Agreement shall become the property of Utility as installed up to and including the water meters, meter boxes, and sewer lateral up to and including the cleanouts at the property line or easement as shown on the plans without cost or expense to Utility, with the exception of the service lines from the water meter outlet to the commercial building, for which the owner shall retain ownership and maintenance responsibility; and the sewer laterals from the tap cleanout to the commercial building, for which the owner shall retain ownership and maintenance responsibility. Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility as necessary or desirable in Utility's opinion to ensure its ownership of, ready access to, and operation and maintenance of the Facilities. Developer shall furnish Utility with lien waivers in a form reasonably satisfactory to Utility's legal counsel from Developer and from all suppliers, subcontractors and all others who furnish labor, equipment, materials, rentals, or who perform any services in connection with the Facilities constructed herein. Developer agrees to provide to Utility documentary evidence, in a form satisfactory to Utility, sufficient to establish the original cost of the Facilities. Utility shall have, at all times following Utility's written acceptance of the Facilities, all right, title and interest in and to the Facilities. Developer agrees to defend, indemnify and hold Utility harmless for any claims arising from any vendor, contract, subcontractor, supplier or other individual or entity to claims any ownership interest in or encumbrance on the Facilities or any of the easements dedicated or conveyed to Utility under this Agreement.

8. Developer shall not have the right to connect individual lot service connections to the Facilities until such time as the Facilities have been formally accepted by the Utility, written approvals have been received from all governmental bodies and regulatory agencies which may have jurisdiction there over, and all applicable connection fees including any applicable taxes have been paid.
9. All connections must be inspected by Utility prior to backfilling and covering of any pipes. Written notice to Utility requesting an inspection of a connection shall be made at least forty-eight (48) hours in advance of the inspection, excluding weekends and official Utility holidays. If Developer fails to comply with the foregoing inspection provisions, Utility may refuse service to a connection until such time as the appropriate inspections have been completed.
10. Prior to the transfer to Utility of the Facilities, Developer shall grant permanent, assignable easements satisfactory to Utility, without cost or expense to Utility, authorizing Utility to own, operate and maintain the Facilities throughout the Property and providing reasonably adequate rights of access and working space for such purposes.
11. Prior to the transfer to Utility of the Facilities, Developer shall provide to Utility as-built drawings, and all other information (by both hard copy and electronic copy), reasonably required to operate, maintain, and repair the Facilities. Water meters shall not be installed by Utility until the close-out package has been submitted by Developer and accepted as complete by Utility.
12. Upon Developer's satisfaction of its obligations under this Agreement, Utility agrees to reserve adequate utility capacity for equivalent to two and one-half (2.5) SFE's for water and wastewater connections located within the Property.

ARTICLE III

Other

1. Developer shall not permit by restricted land covenant, any owner of real estate within the Property to construct or maintain any private well or septic system within the Property.
2. Neither Developer nor any entity or individual affiliated with Developer may execute any agreement with any lot purchaser in the Property or any other parties or make any representations to any such purchasers or other parties that such purchaser or other parties have acquired any interest in the Facilities to be installed under this Agreement. Developer shall indemnify, defend and hold Utility harmless from any and all such claims raised by any party based on any statements, representations or actions by Developer.

ARTICLE IV

Utility Services, Connection Fees, Rates and Charges

1. Developer shall submit to Utility, upon execution of this Agreement, a nonrefundable Plan Review Fee of one thousand dollars (\$1,000.00) and a nonrefundable Inspection Fee of five hundred dollars (\$500.00) for the development. Should the Facilities require additional inspection(s) due to improper installation, defective or unapproved materials, Developer shall pay an additional nonrefundable two hundred fifty dollars (\$250.00) for each additional inspection required.
2. Developer shall pay and deliver to Utility the sum of money which is the non-recurring service connection and capacity fees ("Tap Fees") provided for under Utility's rate schedule, as approved by the Public Service Commission of South Carolina (as may be amended from time to time), including any taxes imposed on Utility for such charges, multiplied by the Single-Family Equivalent ("SFE") rating set forth therein. For the Caliber Collision project that is the subject of this Agreement, that sum shall be a nonrefundable fee of Seven Thousand Three Hundred Forty-Three Dollars and Twelve

Cents (\$7,343.12), which is based upon an estimated two and one-half (2.5) SFEs, applicable taxes and Utility's current rate schedule. Contribution in Aid of Construction (CIAC) taxes shall be calculated per Utility's Tax Gross-up Policy for Property Donated or Cash Contributed. All fees shall be paid on the date of execution of this Agreement. In addition to the above fees and taxes, Developer agrees to pay the CIAC taxes on all materials and construction costs prior to any water meters being placed in operation by Utility. If it is determined that the project contemplated by this Agreement consists of a greater number of SFEs than is estimated hereinabove, Developer shall be required to pay an additional sum to Utility for each additional SFE using the calculation provided for hereinabove, conditioned upon first receiving the approval from Utility for such increase in SFEs. In addition, Developer agrees that it will not represent to any third party that utility service is available from Utility for use within the proposed development, except (1) upon Developer's payment of the Tap Fees as provided hereinabove, (2) Developer's performance of all obligations under this Agreement; and (3) establishment of service and an account between said third party and Utility, including payment of all fees and charges authorized under Utility's approved rate schedule excepting tap fees.

3. Prior to the commencement of utility service to any parcel within the Property, the parcel's owner must pay Utility all applicable water and sewer fees, any applicable York County water and sewer impact and capacity fees, and any other fees that may be required by the Utility's Franchise Agreement with York County. Such fees, usage and all other incidental rates and charges, shall be paid to Utility in accordance with Utility's rates, rules and regulations and conditions of service on file with the South Carolina Public Service Commission and then in effect. Capacity shall not be reserved for any lot, out parcel, commercial space or building for which the tap fee has not been paid.

4. Upon installation and acceptance of the Facilities and payment of all applicable connection fees, Utility agrees to supply all customers within the Property with adequate and customary water and wastewater service and to operate, maintain and repair all Facilities as indicated herein, after acceptance by Utility and issuance of operational approvals by all applicable regulatory authorities.

ARTICLE V

Commission Filing

1. Within thirty (30) days following the execution of this Agreement, Utility will file an application with the Commission for approval of this Agreement, in conformance with Commission rules and regulations. Developer agrees to cooperate with Utility in any proceeding resulting from such application and to reimburse Utility its reasonable attorneys' fees, costs and litigation expenses incurred for such filing in the event such application is litigated by the Office of Regulatory Staff or opposed by third parties. The provision of water and/or sewer service to the customers within the Property is subject to the Commission's authority and approval.

ARTICLE VI

General

1. Except as provided in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligations hereunder, if such failure, default or delay is caused by strikes or other labor problems, by forces of nature, unavoidable accident, fire, acts of the public enemy, interference by civil authorities, acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission, delays in receipt of materials, or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence, such party is unable to prevent or

overcome, except as otherwise provided for herein. If any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.

2. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
3. The representations, warranties and agreements contained herein shall survive, and continue in effect. Developer agrees to defend, indemnify and hold harmless Utility, its successors and assigns, against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer.
4. This Agreement sets forth the complete understanding between Developer and Utility, and any amendments hereto to be effective must be made in writing and signed by both Developer and Utility.
5. Notices, correspondence and invoicing required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Utility:

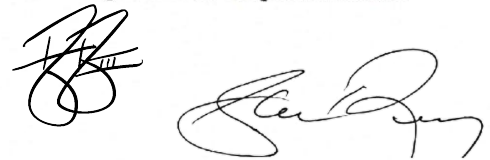
Blue Granite Water Company
130 South Main Street, Suite 800
Greenville, SC 29601
Attn: Travis Dupree, Vice President

If to Developer:

Cross Development CC Lake Wylie, LLC
4336 Marsh Ridge
Carrollton, TX 75010
Attn: Steve Rumsey

Delivery when made by registered or certified mail shall be deemed complete upon mailing. Delivery by overnight courier shall be deemed complete when delivered.


6. This Agreement may not be assigned by Developer without the written approval of Utility, which approval shall not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
7. This Agreement shall be governed by the laws of the State of South Carolina.
8. If this Agreement is not executed prior to ~~February~~ April 15, 2021 then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party.



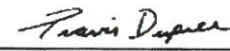
[Signatures Begin on the Following Page]


IN WITNESS WHEREOF, the parties hereto have set their seals the day and year above first written.

Blue Granite Water Company

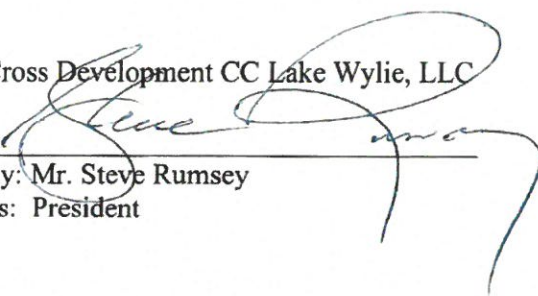

By: Mr. Don Denton
Its: President

Attest/Witness:

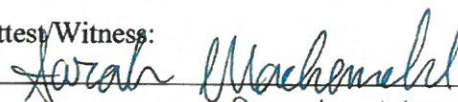
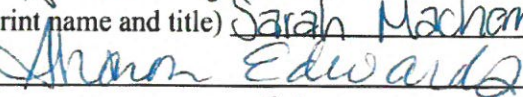
- 1) 

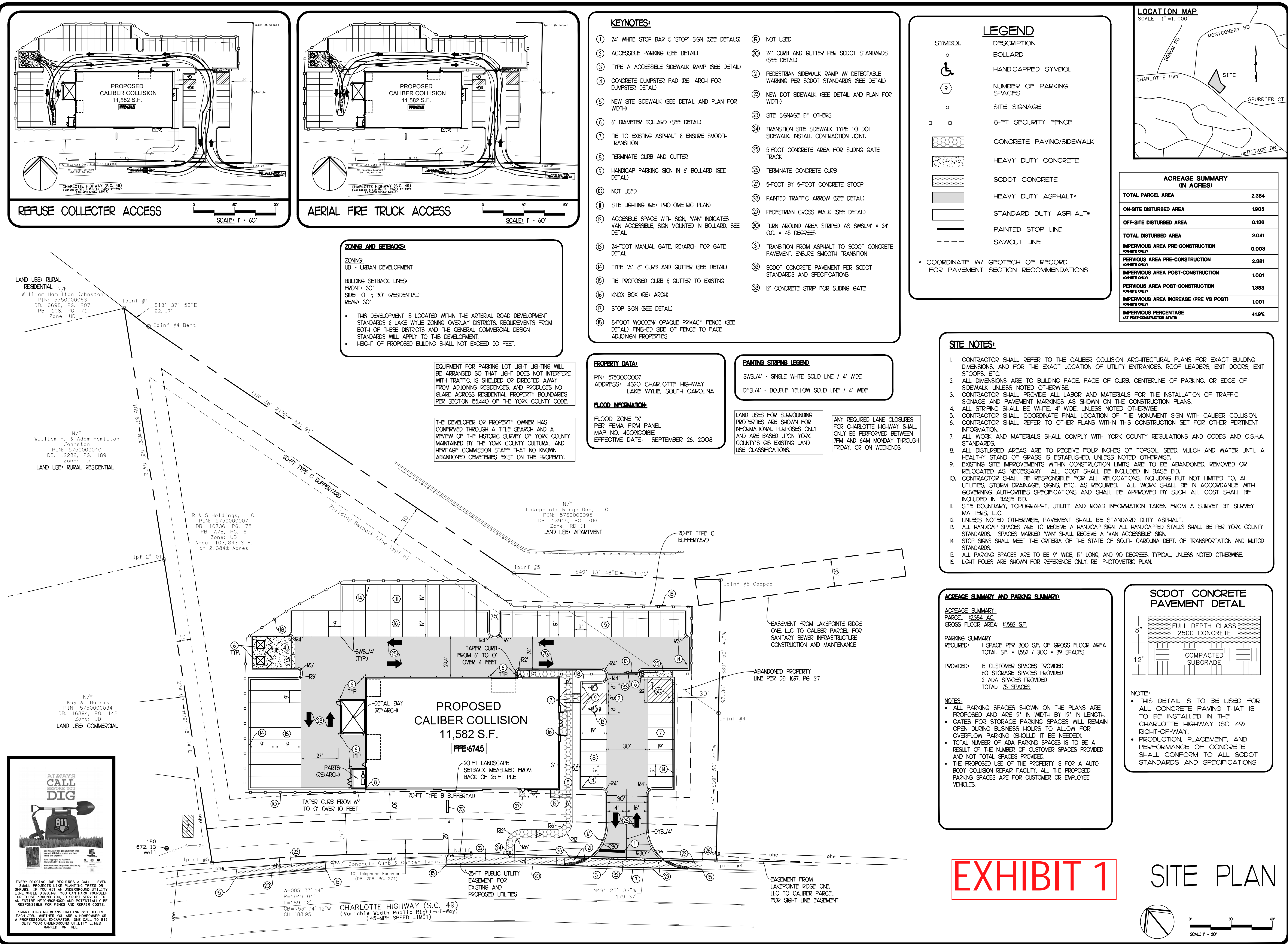
- 2) 
_____ Amy S. Hopkins (Mar 15, 2021 10:51 EDT)

Cross Development CC Lake Wylie, LLC


By: Mr. Steve Rumsey
Its: President

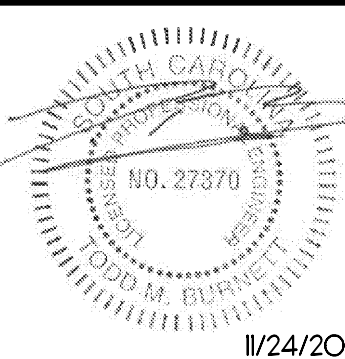
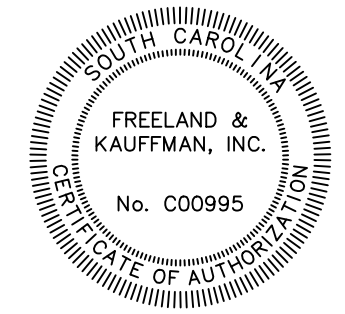
Attest/Witness:

- 1) 
(Print name and title) Sarah Machemehl
- 2) 
(Print name and Title) Sharon Edwards



FREELAND and KAUFFMAN, INC.

Engineers & Landscape Architects
209 West Stone Avenue
Greenville, South Carolina 29609
864-233-5497



CALIBER COLLISION
4320 CHARLOTTE HIGHWAY
CLOVER, SC 29710
YORK COUNTY, SC
CROSS DEVELOPMENT CC LAKE WYLLIE, LLC
4338 MARSH RIDGE
CARROLLTON, TX 75010

DRAWN
BAC
CHECKED
TMB
DATE
11/24/2020
SCALE

DRAWING

9

BEFORE THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-___-S

IN RE:

**Request for Approval of Sewer
 Agreement of Blue Granite Water
 Company Related to Cross
 Development**

**CERTIFICATION
 REGARDING BLUE GRANITE
 WATER COMPANY'S
 PETITION FOR APPROVAL
 OF WATER AND SEWER
 AGREEMENT**

I, Travis Dupree, state that I am employed by Blue Granite Water Company as VP, Project Management & Engineering. I have read Blue Granite Water Company's Request for Approval of Water and Sewer Agreement as related to the Cross Development property, and know the contents thereof; and that the contents are true, accurate and correct to the best of my knowledge, information and belief.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt.

Travis Dupree

By: Travis Dupree

Date: 5/21/2021